

1 Aaron D. Aftergood (239853)
aaron@aftergoodesq.com
2 **THE AFTERGOOD LAW FIRM**
1880 Century Park East, Suite 200
Los Angeles, CA 90067
3 Telephone: (310) 550-5221
Facsimile: (310) 496-2840
4

5 Patrick H. Peluso*
ppeluso@woodrowpeluso.com
6 **WOODROW & PELUSO, LLC**
3900 East Mexico Avenue, Suite 300
Denver, Colorado 80210
7 Telephone: (720) 907-4654
Facsimile: (303) 927-0809
8

9 *Pro Hac Vice to be filed

10 *Attorneys for Plaintiffs and the Classes*

11 **UNITED STATES DISTRICT COURT**
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13 **TAMARA MILLER**, individually and
14 on behalf of all others similarly
situated,

15
16 Plaintiff,

17 v.

18 **BLOOM RETIREMENT**
19 **HOLDINGS, INC.**, f/k/a
20 **AMERICAN ADVISORS GROUP**, a
California corporation,

21 Defendant.
22

Case No. 8:23-cv-00839-FWS-JDE

**FIRST AMENDED CLASS
ACTION COMPLAINT**

JURY TRIAL DEMANDED

23 **FIRST AMENDED CLASS ACTION COMPLAINT**
24 **AND DEMAND FOR JURY TRIAL**
25
26
27
28

1 Plaintiff Tamara Miller (“Miller” or “Plaintiff”) brings this First Amended
2 Class Action Complaint and Demand for Jury Trial (“Complaint”) against
3 Defendant Bloom Retirement Holdings, Inc., f/k/a American Advisors Group
4 (“AAG” or “Defendant”) to (1) stop its practice of placing calls using an “artificial
5 or prerecorded voice” to the cellular telephones of consumers nationwide without
6 their prior express written consent, (2) enjoin Defendant from continuing to place
7 prerecorded telephone calls to consumers who did not provide their prior written
8 express consent to receive them, and (3) obtain redress for all persons injured by
9 their conduct. Plaintiff, for her Complaint, alleges as follows upon personal
10 knowledge as to herself and her own acts and experiences, and, as to all other
11 matters, upon information and belief, including investigation conducted by her
12 attorneys.

13 NATURE OF THE ACTION

14 1. Defendant AAG is a California corporation that engages in the practice
15 of manufacturing and offering financing options including reverse mortgages to
16 homeowners.

17 2. A reverse mortgage is a mortgage loan, usually secured by residential
18 property, that enables the borrower to access the unencumbered value of the
19 property.

20 3. Unfortunately for consumers, Defendant casts its marketing net too
21 wide. That is, in an attempt to promote its business and generate leads for services,
22 Defendant conducted (and continues to conduct) a wide-scale telemarketing
23 campaign that features the repeated making of unsolicited, prerecorded phone calls
24 to consumers’ phones, in violation of the Telephone Consumer Protection Act, 47
25 U.S.C. § 227, *et. seq.* (the “TCPA”).

1 14. Yet, in violation of this rule, Defendant fails to obtain any prior
2 express written consent to make these prerecorded telemarketing calls to residential
3 telephone numbers.

4 15. Defendant utilized prerecorded voice or voice message when making
5 the calls.

6 16. At all times material to this Complaint, Defendant was and is fully
7 aware that unsolicited telemarketing calls are being made to consumers' residential
8 telephones through its own efforts and its agents. All calls were made on behalf of,
9 and for the benefit of the Defendant.

10 17. Defendant AAG knowingly made (and continues to make) unsolicited
11 telemarketing calls without the prior express written consent of all call recipients. In
12 so doing, Defendant not only invaded the personal privacy of the Plaintiff and
13 members of the putative Class, but Defendant also intentionally and repeatedly
14 violated the TCPA.

15 **FACTS SPECIFIC TO PLAINTIFF**

16 18. On June 16, 2020, Plaintiff answered a telephone call placed to
17 Plaintiff's cellphone (with a number ending in 5895) from (985) 228-9301, and was
18 greeted by a pre-recorded avatar voice. The avatar asked how much Plaintiff paid
19 on her mortgage and the amount remaining on the mortgage. This call was placed
20 by or on behalf of AAG, for AAG's benefit.

21 19. Plaintiff received six (6) additional prerecorded calls from or on behalf
22 of AAG. These calls were received on June 17, 2020, 3 calls on June 23, 2020, June
23 29, 2020, and July 7, 2020.

24 20. Plaintiff has never provided her prior express written consent for
25 Defendant to call her using an autodialer or a pre-recorded voice.

1 21. By making unauthorized prerecorded and autodialed calls as alleged
2 herein, Defendant has caused consumers actual harm in the form of annoyance,
3 nuisance, and invasion of privacy. In addition, the calls disturbed Plaintiff's use
4 and enjoyment of her phone, and caused wear and tear to the phone's hardware
5 (including the phone's battery). In the present case, a consumer could be subjected
6 to many unsolicited calls as the Defendant ignores the requirement of prior express
7 written consent.

8 22. In order to redress these injuries, Plaintiff on behalf of herself and the
9 Class of similarly situated individuals, brings suit under the Telephone Consumer
10 Protection Act, 47 U.S.C. § 227, *et. seq.*

11 23. On behalf of the Class, Plaintiff seeks an injunction requiring
12 Defendant to cease all unlawful telemarketing activities and an award of statutory
13 damages to the class members, together with costs, pre- and post-judgment interest,
14 and reasonable attorneys' fees.

15 16 CLASS ACTION ALLEGATIONS

17 24. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure
18 23(b)(2) and Rule 23(b)(3) on behalf of herself and all others similarly situated and
19 seeks certification of the following Classes:

20
21 **Prerecorded No Consent Class:** All persons in the United States from
22 four years prior to the filing of the instant action who (1) Defendant (or
23 a third person acting on behalf of Defendant) made prerecorded calls,
24 (2) to the person's cellular telephone or residential telephone number,
25 and (3) for whom Defendant claims it obtained prior express written
26 consent in the same manner as Defendant claims it supposedly

1 obtained prior express written consent to send prerecorded calls to the
2 Plaintiff.

3
4 25. The following individuals are excluded from the Classes: (1) any Judge
5 or Magistrate presiding over this action and members of their families; (2)
6 Defendant, its subsidiaries, parents, successors, predecessors, and any entity in
7 which Defendant or its parents have a controlling interest and its current or former
8 employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who properly
9 execute and file a timely request for exclusion from the Classes; (5) the legal
10 representatives, successors or assigns of any such excluded persons; and (6) persons
11 whose claims against Defendant have been fully and finally adjudicated and/or
12 released. Plaintiff anticipates the need to amend the class definitions following
13 appropriate discovery.

14 26. **Numerosity:** The exact size of the Classes unknown and not available
15 to Plaintiff at this time, but it clear that individual joinder is impracticable. On
16 information and belief, Defendant made prerecorded calls to thousands of
17 consumers who fall into the definition of the Classes. Members of the Classes can
18 be easily identified through Defendant's records.

19 27. **Commonality and Predominance:** There are many questions of law
20 and fact common to the claims of Plaintiff and the Classes, and those questions
21 predominate over any questions that may affect individual members of the Class.
22 Common questions for the Classes include, but are not necessarily limited to the
23 following:

- 24 a. Whether Defendant's conduct constitutes a violation of the TCPA;
25 b. Whether Defendant made calls (or had calls made on its behalf or
26 for its benefit) using a prerecorded voice or recorded messages;

1 c. Whether members of the Classes are entitled to treble damages
2 based on the willfulness of Defendant's conduct; and

3 d. Whether Defendant obtained prior express consent to contact any
4 class members using a prerecorded voice.

5
6 28. **Adequate Representation:** Plaintiff will fairly and adequately
7 represent and protect the interests of the Classes, and has retained counsel
8 competent and experienced in class actions. Plaintiff has no interests antagonistic to
9 those of the Classes, and Defendant has no defenses unique to Plaintiff. Plaintiff
10 and his counsel are committed to vigorously prosecuting this action on behalf of the
11 members of the Classes, and have the financial resources to do so. Neither Plaintiff
12 nor his counsel has any interest adverse to the Classes.

13 29. **Appropriateness:** This class action is also appropriate for
14 certification because Defendant has acted or refused to act on grounds generally
15 applicable to the Classes and as a whole, thereby requiring the Court's imposition
16 of uniform relief to ensure compatible standards of conduct toward the members of
17 the Classes and making final class-wide injunctive relief appropriate. Defendant's
18 business practices apply to and affect the members of the Classes uniformly, and
19 Plaintiff's challenge of those practices hinges on Defendant's conduct with respect
20 to the Classes as a whole, not on facts or law applicable only to Plaintiff.
21 Additionally, the damages suffered by individual members of the Classes will likely
22 be small relative to the burden and expense of individual prosecution of the
23 complex litigation necessitated by Defendant's actions. Thus, it would be virtually
24 impossible for the members of the Classes to obtain effective relief from
25 Defendant's misconduct on an individual basis. A class action provides the benefits
26 of single adjudication, economies of scale, and comprehensive supervision by a

1 single court. Economies of time, effort, and expense will be fostered and uniformity
2 of decisions will be ensured.

3 **FIRST CAUSE OF ACTION**

4 **Telephone Consumer Protection Act**

5 **(Violation of 47 U.S.C. § 227)**

6 **(On behalf of Plaintiff and the Prerecorded No Consent Class)**

7 30. Plaintiff repeats and realleges the above paragraphs of this Complaint
8 and incorporates them herein by reference.

9 31. Defendant made prerecorded calls to residential telephone numbers
10 belonging to Plaintiff and other members of the Prerecorded No Consent Class
11 without first obtaining prior express written consent to receive such calls.

12 32. Defendant made the prerecorded calls using equipment that had the
13 capacity to store or produce telephone numbers using a random or sequential
14 number generator, to receive and store lists of phone numbers, and to dial such
15 numbers, *en masse*, without human intervention. The telephone dialing equipment
16 utilized by Defendant, also known as a predictive dialer, dialed numbers from a list,
17 or dialed numbers from a database of telephone numbers, in an automatic and
18 systematic manner. Defendant's autodialer disseminated information *en masse* to
19 Plaintiff and other consumers.

20 33. By making the prerecorded calls to Plaintiff and the residential
21 telephones of members of the Prerecorded No Consent Class without their prior
22 express written consent, and by utilizing an automatic telephone dialing system to
23 make those calls, Defendants violated 47 U.S.C. § 227(b)(1)(A)(iii).

24 34. The calls were for telemarketing purposes and announced the
25 commercial availability of Defendant's hearing aid goods and services.

1 35. Neither Plaintiff nor any other member of the proposed Class had any
2 established business relationship with either Defendant.

3 36. Defendant has, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a
4 result of Defendant's conduct, Plaintiff and the other members of the Prerecorded
5 No Consent Class are each entitled to, under 47 U.S.C. § 227(b)(3)(B), a minimum
6 of \$500.00 in damages for each violation of such act.

7 37. In the event that the Court determines that Defendant's conduct was
8 willful and knowing, it may, under 47 U.S.C. § 227(b)(3)(C), treble the amount of
9 statutory damages recoverable by Plaintiff and the other members of the
10 Prerecorded No Consent Class.

11
12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for
14 the following relief:

15 1. An order certifying the Classes as defined above, appointing Plaintiff
16 as the representative of the Class, and appointing her counsel as Class Counsel;

17 2. An award of actual monetary loss from such violations or the sum of
18 five hundred dollars (\$500.00) for each violation, whichever is greater all to be paid
19 into a common fund for the benefit of the Plaintiff and Class Members;

20 3. Treble damages in case willful or knowing violations are proven

21 4. An order declaring that Defendant's actions, as set out above, violate
22 the TCPA,

23 5. An injunction requiring Defendant to cease all unsolicited prerecorded
24 calling and autodialing activities, and otherwise protecting the interests of the
25 Classes;

